

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

MFA.No. 1058 of 1993()

WCC.99/1991 of COMMISSIONER FOR WORKMEN'S COMPENSATION, ERNAKULAM
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APPELLANT: (2ND OPPOSITE PARTY)

THE ORIENTAL INSURANCE CO. LTD., REP. BY
THE ADMINISTRATIVE OFFICER (LEGAL), MOTOR THIRD
PARTY CLAIMS OFFICE, IV-VETTUKATTIL BUILDINGS,
JOS JUNCTION, P.B.NO.1835, COCHIN - 682 016.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS: APPLICANT & I OPPOSITE PARTY

1. M.N.NANDAKUMAR, S/O.NARAYANAN, MALIYAM VEEDU,
VADUTHALA, KOCHI - 23.
2. LAXMIKANT R.PAI, H.NO.IX/1488, R.G.PAI ROAD,
KOCHI - 2.

BY ADV. SRI.SREELAL N.WARRIER
SRI.MURALI PURUSHOTHAMAN
SRI.V.C.JOY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.1058 OF 1993

Dated this the 17th July, 2007.

J U D G M E N T

The second opposite party, Insurer, in W.C.C.No.99/1991, on the file of the Commissioner for Workmen's Compensation Court, Ernakulam, is the appellant. The appeal is filed against an order passed by the Deputy Labour Commissioner, by which the appellant was directed to deposit an amount of Rs.49,265/= with interest and cost as compensation, due to the first respondent.

2. The short facts necessary for disposal of the appeal are as follows. The first respondent is a driver by profession. He filed an application before the Workmen's Compensation Court alleging that he was employed by the second respondent as a driver of autorickshaw bearing Registration No. KLF 6637. While he was driving the vehicle, it capsized and he sustained employment injuries. According to the first respondent, he had fracture to pelvis, fracture of Urethra and other serious injuries. He contented that he was getting a monthly wages of Rs.1500/=, aged 34 years, hence, he was entitled to get an amount of Rs.99,700/= as compensation.

3. The second respondent admitted the employer-employee relationship. The fact that first respondent sustained injuries was also admitted. It was contented that the vehicle was covered with a valid policy of insurance issued by the appellant. The nature of injuries narrated in the petition was also disputed. The quantum of compensation claimed was also denied. The appellant admitted the existence of a valid policy, but disputed the accident, quantum of compensation etc. The Deputy Labour Commissioner, after considering the evidence on record, found that the first respondent sustained employment injuries. It was also found that he was entitled to get an amount of Rs.49,265/= with interest at the rate of 6% and cost as compensation. It also directed the appellant to pay the amount. This appeal is filed challenging the liability of the insurer.

4. Though several grounds were raised during the course of attack, the main ground raised was the percentage of disability fixed in this case. I have carefully gone through the evidence. I also agree with the findings of the Workmen's Compensation Court that the workman was the employee of the

second respondent, and the first respondent sustained an employment injury, and, as such, he is entitled to get compensation. I also confirm the findings of the Workmen's Compensation Court that the vehicle was covered with a valid policy of insurance.

5. The first respondent has produced Ext.A7 medical certificate, in which the Doctor had certified that he is having a partial permanent disability of 15%. The Doctor was examined also. He deposed that though the first respondent can drive an autorickshaw, it may not be possible for him to set for fairly a long time and drive the vehicle. He further deposed that it may not be possible for the first respondent to drive an autorickshaw by profession. In view of that evidence, the Workmen's Compensation Court enhanced the disability to 50% and fixed the compensation.

6. In **New India Assurance Co. Ltd. v. V.Sreedharan** (1995 (1) KLT 275), a Full Bench of this Court held that when a Doctor issues a medical certificate in a proceedings under Section 22 of the Workmen's Compensation Act, the Deputy Labour

Commissioner is not entitled to re-fix the percentage of disability and fix the compensation based on such finding. Therefore, the finding of the Workmen's Compensation Court that the first respondent has lost 50% of the earning capacity is illegal and unsustainable, and liable to be set aside. Hence, the compensation due to the petitioner is to be re-fixed taking 15% as his disability. So, the compensation will be fixed as, $1000 \times 50/100 \times 197.06 \times 15/100 = \text{Rs.}14,779.50$. The amount will carry interest at the rate of 6% and the cost awarded by the court below.

7. It is seen that the appellant had deposited an amount of Rs.56,238/= on 11.10.1993. The first respondent had withdraw an amount of Rs.25,000/= from the amount so deposited. It is made clear that if the amount due to the first respondent is in excess of Rs.25,000/=, the appellant-insurer shall pay that excess amount also. If the amount due is less than Rs.25,000/= already withdrawn, the excess amount withdrawn by the first respondent shall

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not be recovered by the appellant-insurer, and that will be treated as an ex-gratia by the appellant. Any excess amount remaining in deposit can be withdrawn by the appellant.

C.M.P.No.3697/1993 in M.F.A.No.1058/1993 is dismissed.

**K.PADMANABHAN NAIR,
JUDGE**

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 1058 of 1993

J U D G M E N T

Dated: 17th July, 2007.
